IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 31ST OCTOBER 2007 / 9TH KARTHIKA 1929

Bail Appl..No. 6593 of 2007()

CC.1245/2003 of J.M.F.C.,CHALAKUDY

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: PETITIONER/2ND ACCUSED

ABDUL RAHIMAN.V.S,
S/O. LATE SAIDUKUNJU,VALLATHUPADIKKAL
HOUSE, KARUMATHARA P.O., KONOTHUKUNNU (VIA)
THRISSUR DISTRICT.

BY ADV. SRI.P.K.IBRAHIM
SRI.D.B.BINU
SRI.THOMSTINE K.AUGUSTINE
SRI.C.N.GOPAKUMAR

RESPONDENTS: RESPONDENT

STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA,ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.JAI GEORGE

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 31/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J.

B.A.No.6593 of 2007

Dated this the 31st day of October 2007

O R D E R

Application for anticipatory bail. The petitioner faces indictment in a prosecution under Section 138 of the Negotiable Instruments Act. From the number assigned in the case, the prosecution was lodged as early as in 2003 as C.C.No.1245/03. The case is at the stage of 313 examination, submits the learned counsel for the petitioner. The petitioner is employed abroad. He was not available to be proceeded with. The matter was posted to 15/10/2007. On that day, consequent to non-appearance of the petitioner, though he was available in India at that time, a warrant of arrest has been issued against the petitioner.

2. According to the petitioner, he is absolutely innocent. His absence was not wilful or deliberate. He had come to India urgently only because of some complication consequent to the child birth of his daughter. The petitioner is now willing to surrender before the learned Magistrate and seek regular bail. But he apprehends that his application for bail may not be considered by the learned Magistrate on merits, in accordance with law and expeditiously. He, therefore, prays that directions under Section 482 Cr.P.C. may be issued to the learned Magistrate to release the petitioner on bail when he appears and applies for bail. He further prays that a warrant of arrest issued on 15/10/2007 may not be executed and he may not be dragged to court in custody. Appropriate directions may be issued, it is prayed.

3. It is for the petitioner to appear before the learned Magistrate and explain to the learned Magistrate, the circumstances under which he could not earlier appear before the learned Magistrate.

I find absolutely no reason to assume that the learned Magistrate would not consider the application for bail to be filed by the petitioner on merits, in accordance with law and expeditiously. Every court must do the same. No special or specific directions appear to be necessary. Sufficient general directions have been issued in Alice George vs. Deputy Superintendent of Police [2003(1)KLT 339].

4. In the result, this bail application is dismissed but with the specific observation that if the petitioner surrenders before the learned Magistrate and applies for bail, after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits, in accordance with law and expeditiously - on the date of surrender itself.

5. In the peculiar facts and circumstances of this case, there shall be a direction that the warrant of arrest issued against the petitioner shall not be executed till 5/11/2007. On or before that date, the petitioner shall appear before the learned Magistrate and seek regular bail.

Hand over copy of this order to the learned counsel for the petitioner.

(R.BASANT, JUDGE)

jsr

R.BASANT, J.

CRL.M.CNo.

ORDER

21ST DAY OF MAY2007